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**Alexander Goepfert, Haftungsprobleme im Kunst- und Auktionshandel
[Liability Problems in Art Trade and Art Auctions]. 23.5×15.5 cm. pp. 146.
Berlin: Duncker Humblot 1991. ISBN 3-428-07225-1. (Schriften zum
Bürgerlichen Recht [Studies on Private Law], vol. 149)**

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Kurt Siehr*

Alexander Goepfert, *Haftungsprobleme im Kunst- and Auktionenhandel* [Liability Problems in Art Trade and Art Auctions]. 23.5×15.5 cm. pp. 146. Berlin: Duncker & Humblot 1991. ISBN 3-428-07225-1. Paperback DM 74.00 (Schriften zum Bürgerlichen Recht [Studies on Private Law], vol. 149)

The doctorate thesis of Mr Goepfert is devoted exclusively to the German law of sale of art by art dealers. The main problem is nearly the same in every other legal system: Is there any warranty of the seller with respect to the authenticity of pieces of art? In German literature and also in case law the question arose whether a certain piece of art is so unique that every description or ascription to an artist cannot add anything to the quality of the piece sold. Therefore there would not be any warranty for such an *objective* notion of defect. It would only raise the very interesting aesthetic and economical questions whether, for instance, the painting "Man with the Golden Helmet", formerly ascribed to Rembrandt, is less impressive

and less valuable after its attribution to one of Rembrandt's pupils. Today, however, also in Germany a *subjective* notion of defect prevails: Given the fact that art is traded and bought also because of its authenticity, the seller is responsible for his descriptions unless he has validly excluded any liability.

The author does not question this starting point. He rather examines all the other problems connected with warranties in art trade, including trade with visual art multiples (prints, sculptures, photographs). He concentrates on three main problems and considers firstly whether ascriptions amount to guarantees which may entail a responsibility for damages [Civil Code §§ 463, 123) as to the authenticity of the object?

Under German law the seller may exclude any warranty or guarantee with respect to the origin of an art object. For good reasons, however, courts are reluctant to interpret any vague description as a tacit or implied warranty or guarantee. The second problem is more complicated because normally there is no privity between an expert and the buyer. Despite this, an expert may be held responsible if he does not restrict his opinion for anonymous use by the

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seller and if the buyer relies on this opinion and was also expected to do so (p. 89). The third question – avoiding the sale because of mistake – is extremely important as the statute of limitations in sales law provides a very short period of six months (Civil Code § 477). Therefore it would be very helpful for the buyer if he could avoid the contract as soon as he discovers his error within the rather long period of thirty years from the date of contract (Civil Code § 121). German court practice has excluded this possibility because otherwise the short prescription period of Civil Code § 477 would be reduced to unimportance and deprived of its efficacy in speeding up the final performance of sales.

The last chapter of Goepfert's thesis deals with art auctions. As to these the general principles of sales law apply. A special problem arises with respect to standard conditions used by most of the auction

houses in Germany and abroad (examples of German, English, Dutch and American standard conditions are reproduced in the annex). The German General Trade Terms Act applies also to sales by auction. An exclusion of every warranty whatsoever is invalid if the description in the catalogue was carelessly done and if general conditions (as, e.g., those of some English auction houses) do not provide for the buyer's right to return the object within five years in cases of forgeries or any lacking authenticity. There is no objection to an exclusion of any guarantee pertaining to a specific artist. If, however, an ascription is used, proudly confirmed by an expert opinion and which finally misleads the buyer, such as ascription may amount to a guarantee although any responsibility is excluded by general terms.

The thesis is well done and draws a reliable picture of the German law of contractual liability of art dealers.